S185457

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

City of Alhambra, et al.
Plaintiffs and Appellants

vs.

County of Los Angeles, et al.
Defendants and Respondents.

ANSWER TO PETITION FOR REVIEW

Of a Published Decision of the Second District Court of Appeal

Reversing a Judgment Entered by the Superior Court of
the State of California for the County of Los Angeles, Case No. BC116375
[By CCP § 638 Reference to the Hon. Dzintra Janavs (Ret.)]

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City of Alhambra, *et al.*

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

INTRODUCTION

While the stakes in this case for the County of Los Angeles and the 88 cities within it are substantial, the legal issues are not: the Court of Appeal applied well-established rules of statutory construction to the plain language of a single Revenue & Taxation Code section to arrive at the very result achieved in the only other case to consider the issue. If the Second District's careful and detailed application of those fundamental rules has not achieved the legislative purpose, the Legislature can easily correct the error, and this Court need not apply its limited resources to do so. Nor is there any evidence of a lack of legislative solicitude for the concerns of counties in this regard, as is evidenced by the other legislation on this very subject obtained at the behest of counties and cited in the Petition.

Simply put, no conflict of law exists on the issue; no conflicting precedents need resolution. Accordingly, this Court should decline the County's invitation to create a conflict where none exists simply to rewrite a statute the County dislikes. The Court of Appeal aptly summed up this case in the final sentence of its well reasoned decision: "In the end, it is up to the Legislature not the courts to rewrite the statute." (Decision, p. 19.)

LEGAL DISCUSSION

I. Review Is Unnecessary Because No Conflict of Law Exists

This Court may order review of a Court of Appeal decision "when necessary to secure uniformity of decision or settle an important question of law." (California Rules of Court, Rule 8.500(b)(1).) In the instant case, however no conflict appears, and the Court of Appeal decision is sufficient to the settle the question. Indeed, the underlying decision is the sole appellate case interpreting Revenue & Taxation Code § 97.75, published or otherwise. The only other suit interpreting § 97.75[1] was filed in Fresno County, *City of Clovis et al. v. County of Fresno et al.* (Super. Ct. Fresno County, 2010, No. 08 CE CG03535 AMC), and, consistently with the Court of Appeal's subsequent conclusion here, resulted in a writ of mandate against the County of Fresno on the grounds that it had improperly interpreted § 97.75 to withhold thousands of dollars of property taxes from its cities. The Second District decided this case after the County of Fresno appealed that decision to the Fifth District, which is now pending as Case No. F060148. No contrary Court of Appeal ruling has issued in the Fresno matter, and the County of Los Angeles has presented no grounds to support its wishful assumption that one will. Moreover, should the Fifth District disagree with the Second, undoubtedly a Petition for Review will arise in the Fresno case,

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[1] Unspecified section references in this Answer are to the Revenue & Taxation Code.

presenting a square conflict worthy of this Court's attention. Section 97.75 need not detain this Court now.

Thus, one trial court and one Court of Appeal have consistently interpreted the plain language of § 97.75 to authorize counties to charge cities **only** the incremental costs associated with the additional accounting services required by §§ 97.68 (Triple Flip) and 97.70 (VLF Swap). In this so-called "Great Recession," cities, no less than counties, have need of the money at issue in this case and all local governments need certainty above all. It will do Los Angeles County little good to continue to receive – and spend – funds to which it is not entitled while this case is pending in this Court. Since the Court of Appeal persuasively demonstrated the Legislature's intent and the only other trial court decision to date is consistent with it, certainty can be provided by denial of review. Accordingly the Cities which were petitioners in the court below ("the Cities") respectfully urge this Court to deny the Petition.

II. The Court Of Appeal Correctly Applied Basic Statutory Rules of Construction to Interpret Revenue & Taxation Code § 97.75

The Petition presents the issue whether the Legislature intended the older, more general § 95.3 to control over the recently-enacted more specific § 97.75.[2] The answer, as Second District Court of Appeal correctly decided, is "no."

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[2] This Answer does not emphasize a counter-question to the argumentative question posed by the Petition because the Cities do not believe any question in

Section 97.75, enacted in 2004 – a decade after § 95.3's grant of general authority to impose property tax administration fees (PTAF) – specifically addresses the County's authority to charge Cities to implement the Triple Flip and the VLF Swap mandated by §§ 97.68 and 97.70, respectively. The Court of Appeal utilized long established and well understood rules of statutory construction to find that the County's practice of charging petitioner Cities over $4.8 million in the 2006-07 fiscal year and $5.3 million in 2007-08 fiscal year for services it admits cost only $35,000[3] violated both the plain language and legislative intent of § 97.75.

A. The Court of Appeal Implemented § 97.75's Plain Language

As it must, the Court of Appeal looked first to the plain language of the statute to interpret the disputed term "services." The County argues that "services" includes all the services it provides under §§ 95.3 and 96.1 to operate the property tax system, from assessing properties to foreclosing on delinquencies. However, as the Court of Appeal aptly observed:

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this case merits review. However, were this Court to grant review, a more appropriately framed question would be: "Did the Court of Appeal correctly construe Revenue & Taxation Code § 97.75 to provide that counties may recover their actual, marginal costs to implement the VLF Swap and Triple Flip but may not reallocate their entire cost to administer the property tax system in light of property taxes paid in lieu of vehicle license fees and sales taxes under those measures?"

[3] The County stipulated to this $35,000 cost. (Stip. Fact No. 16; 1 JA 49.)

> Looking at the words of Revenue and Taxation Code section 97.75 alone, they reveal the clear intent that "services" are those that counties render pursuant to the Triple Flip (§ 97.68) and VLF Swap (§ 97.70) ***only***.

(Decision, p. 13, original emphasis.) The services provided under §§ 97.68 and 97.70 do not include "the additional activities for equalizing, assessing and collecting property tax, processing appeals, or otherwise administering the property tax system as a whole." (Decision, p. 13.) Thus, the plain language of the statute demonstrates the Legislature's intent that § 97.75's authorization to recover costs does not include any "traditional PTAF-generating" tasks. (Decision, p. 14.)

The County finds fault with the Court of Appeal's use of the word "only," noting that word does not appear in § 97.75. (Petition, p. 16, fn. 20.) However, the Court of Appeal does not wrongly import the word "only" into § 97.75 by reading its closed list of the "actual costs" that might be recovered (*i.e.,* the costs to implement the VLF Swap and Triple Flip) as the "only" elements of that express statutory list. To describe the effect of a statute in words other than a statute used is the essential explicatory role of a court engaged in statutory construction. Doing so does not read language into a statute, and the County's claim to the contrary may be skillful rhetoric, but it is not persuasive legal analysis.

B. The Court of Appeal Properly Interpreted § 97.75 in Its Legislative Context

The County mistakenly argues the Court of Appeal failed to interpret § 97.75 in its context by reading it to exclude services under §§ 95.3 and 96.1 from the limited scope of the authority to impose PTAF conferred by § 97.75. Again, however, the Court of Appeal applied basic rules of statutory construction to construe § 97.75. The court recognized, as it must, that § 97.75 begins with the phrase "Notwithstanding any other provisions of law... ." (Decision, p. 15.) This phrase, the court found:

> [C]learly indicates the Legislature's intent that section 97.75 govern the fees for administering the Triple Flip and VLF Swap regardless of any ***earlier*** enacted statutes governing the assessment and collection of property tax administration fees in general, such as section 95.3.

(Decision, p. 15, original emphasis.) Consequently, the specific § 97.75, adopted in 2004 simultaneously with the Triple Flip and VLF Swap to which it applies, controls over the decade-older, more general §§ 95.3 and 96.1, which govern PTAF generally. (Decision, pp. 14, 18.)

Thus, contrary to the County's claims, the Court of Appeal did not ignore context and rule that § 97.75 impliedly repealed § 95.3. Rather, it specifically noted the context and held that § 97.75 did not repeal § 95.3, but set forth an express exception to it:

> [T]he Legislature intended that section 97.75 stand alone with respect to the administrative costs incurred in performing the services for the Triple Flip and VLF Swap, while assuring that counties would still be reimbursed for those efforts."

(Decision, pp. 15-16.) Consequently, the court properly found that the Legislature intended not harmony between the general PTAF statutes and § 97.75; but rather that the newer provision create an express exception to the earlier, more general rules. The Legislature did so to avoid the very multi-million dollar windfall that the County of Los Angeles has nevertheless taken for itself here.

C. The Court of Appeal Property Ignored the Counties' Underground Guidelines in Interpreting § 97.75

As it did in the lower courts, the County relies on Guidelines issued by the California State Association of County Auditors to support its convolute interpretation of § 97.75. The Court of Appeal properly rejected this argument: "The Guidelines were not vetted under the Administrative Procedure Act and, as

the parties stipulate, they 'do not have the force of law.'" (Decision, p. 19, fn. 10.) This was proper.[4] That many county Auditors assert their right to withhold city property taxes to augment funding for their offices does not confer that right.

> An administrative agency cannot alter or enlarge the legislation, and an erroneous administrative construction does not govern the court's interpretation of the statute.

(*Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 526.)

Moreover, counties, and their auditors, are not disinterested observers of the property tax allocation system, but the largest beneficiaries of it. Deferring to a cash-strapped county's allocation of scarce property tax dollars during the "Great Recession" is akin to allowing one of several thirsty people in a desert carte blanche to administer the party's water supply. Other recent decisions illustrate the hazards of allowing county Auditors to act without as judicial scrutiny when their interpretations of the Revenue & Taxation Code can inflate county coffers by millions of dollars. (See, e.g., *Los Angeles Unified School District v. County of Los Angeles* (2010) 181 Cal.App.4th 414 [Los Angeles County improperly reduced school district's share of redevelopment agency pass-through payments,

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[4] Section 96.1(c) provides that, if either the State Controller or the State Department of Finance adopts the Auditors' Guidelines regulations consistently with the notice and comment procedures of the Administrative Procedures Act, they will be deemed correct unless clarified by legislation or court decision. To date, however, the Auditors have never subjected their underground rules to the discipline of the APA process. Accordingly, the Guidelines remain the private view of county Auditors, whose own funding is at stake here.

and increased the County's share, by hundreds of millions of dollars]; see also, *City of Scotts Valley v. County of Santa Cruz et al,* 1st District Court of Appeal Case No. A126357, appeal of Superior Court of San Mateo County, Case No. 467230 [Pending appeal of trial court's conclusion San Mateo County improperly interpreted Rev. & Tax Code § 98 to wrongfully withhold $2 million of property taxes from Scotts Valley over three years].)

D. The Court of Appeal Properly Ignored the Alleged Overpayment of VLF In-Lieu Fees

As it did in the Court of Appeal, the County asks this Court to ignore § 97.75's mandate because the VLF Swap has allegedly netted cities and counties more property tax revenue than they lost in VLF fees because of the rising real estate market that characterized most of the last decade. (Petition, p. 18.) In other words, § 97.75 should be ignored because Cities "were not really harmed."

Properly, the Court of Appeal rejected this argument out of hand: "It is not our task to rewrite section 97.75 to offset perceived inequity created by another statute, in this case section 97.70." (Decision, p. 19.) Notably, though the County claims the Cities have benefitted from the VLF Swap, it is the County itself that is the largest single beneficiary, as it receives VLF Swap funds on the same terms as do Cities and its revenues are larger than those of any City. (Rev. & Tax. Code § 97.70(b)(1).) Thus, any alleged "benefit" to Cities is enjoyed in greater amounts by the County. Moreover, by including in its PTAF calculation the purported

"boon" to the cities and counties from the VLF Swap, the County receives a double windfall, for it receives both the authorized property taxes paid to replace payments in lieu of vehicle license fees which the State had previously made from the State general fund **and** unauthorized PTAF taken from cities, for which no backfill is provided to anyone.

Still further, as recent events have shown, what goes up can also come down. The windfall of property taxes paid in lieu of VLF during the booming housing market will not continue in the current housing market in which assessed valuations are falling at an historic rate. Cities and counties both will share in this economic reality. Thus, a temporary upswing in property taxes paid in lieu of VLF tells us little to countermand the express language of § 97.75 in issue here.

In sum, the County's argument here does not withstand the considered reasoning of the Court of Appeal.

III. The County Gives No Meaning to § 97.75's Second Sentence

The County argues that the sole purpose of § 97.75 was to exempt the VLF Swap and Triple Flip funds from inclusion in the PTAF calculation for two fiscal years – 2004-05 and 2005-06. The Court of Appeal properly rejected this conclusion. If § 97.75 were meant only to exempt the VLF Swap and Triple Flip from PTAF for two years, then the last sentence of the statute would be wholly unnecessary. The statute reads, in full:

> Notwithstanding any other provision of law, for the 2004-05 and 2005-06 fiscal years, a county shall not impose a fee, charge, or other levy on a city, nor reduce a city's allocation of ad valorem property tax revenue, in reimbursement for the services performed by the county under Sections 97.68 and 97.70. For the 2006-07 fiscal year and each fiscal year thereafter, a county may impose a fee, charge, or other levy on a city for these services, but the fee, charge, or other levy shall not exceed the actual cost of providing these services.

Why would the Legislature state that, beginning in 2006-2007 counties may charge for "these services," limited to the actual costs, if – as the County urges – § 95.3 applies to authorize such charges regardless of § 97.75?

This interpretation renders the second sentence § 97.75 surplus, a result foreclosed by long-established rules of statutory construction. The interpretation that gives effect to the second sentence is the one articulated by the Court of Appeal, which limits the County's recovery under § 97.75 to its annual costs to administer the VLF Swap and Triple Flip.

IV. The County's Alleged Financial Distress Does Not Justify Review

In large part, the County bases its plea for review on the financial burden it will face to comply with § 97.75. That large sums of money turn on the meaning of a simple, two-sentence statute does not alone justify review in this Court. Were dollars at stake alone sufficient to justify review, every large-dollar tort case would clutter this Court's docket.

Moreover, as this Court has held, financial distress is no bar to a writ of mandate. Rising costs do not justify the failure to comply with statutory obligations. *May v. Board of Dir. of El Camino Irr. Dist.* (1949) 34 Cal.2d 125, 134 (financial stress on agency is not a defense to a writ action to compel compliance with law.) Any difficulty the County may face in complying with § 97.75's limits is one of its own making and does not provide grounds for review in this Court of an otherwise straightforward case of statutory interpretation.[5]

Finally, though the County goes to great lengths to depict itself as unfairly burdened by its property tax administration responsibilities, it ignores two key issues. First, the Triple Flip and VLF Swap funds are paid from funds that would otherwise flow to the Educational Revenue Augmentation Fund (ERAF), which is expressly exempt from PTAF recoupment. (Rev. & Tax. Code § 95.3(b).) The

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[5] Moreover, Los Angeles County is the largest political subdivision in the country with some 10.4 million residents and gross revenues of billions of dollars. County Fact Sheet (Senate Local Government Committee, August 2009) viewed at http://senweb03.senate.ca.gov/committee/standing/LOCAL_GOV/CountyFactSheet2009.pdf. The $60 million it alleges to be at stake here does not loom as large in Los Angeles County's context as it might elsewhere.

County would not be able to recover PTAF on those amounts in any event. Thus, the Court of Appeal's interpretation of § 97.75 preserves the *status quo*, and the County is no worse off than if the Triple Flip and VLF Swap had never been enacted – the very purpose of those measures! That the County will be required to repay funds unlawfully withheld from the Cities may be painful, but that fact does not compel review by this Court.

Second, the County ignores other relevant statutes in which the Legislature explicitly appropriated funds to counties to alleviate their property tax administration burden. Specifically, in 1995, the Legislature adopted § 95.31, which created the State-County Property Tax Administration Program. This program authorized state loans in fiscal years 1995-96 to 2001-02 to qualifying counties to "enhance the property tax administration system by providing supplemental resources." (Rev. & Tax. Code § 95.31(c)(1).) In 2001, the Legislature adopted § 95.35 to create the State-County Property Tax Administration Grant Program finding:

> [T]he success of [the State-County Property Tax Loan Program] has demonstrated the appropriateness of an ongoing commitment of state funds to reduce the burden of property tax administration on county finances. Therefore, it is the intent of the Legislature, in enacting this act, to establish a grant program

> known as the State-County Property Tax Administration Grant Program that will continue the success of the State-County Property Tax Loan Program and maintain the commitment to efficient property tax administration. (Rev. & Tax. Code § 95.35(a).)

Had Los Angeles County chosen to participate and otherwise qualified, § 95.35 authorized an annual grant of $13,451,670 for fiscal years 2003-04 through 2006-07 – a significant fraction of the sums in issue here. (Rev. & Tax. Code § 95.35(c)(3).)

Sections 95.31 and 95.35 demonstrate the Legislature appropriates funds to counties to offset the administrative burden placed on them by the property tax system and is neither blind to their needs nor deaf to their pleas for assistance. The Court of Appeal properly determined that § 97.75, by contrast, did not imply such an appropriation, particularly at cities' expense. Thus, the County's complaints of "unfairness" provide little aid in construing the plain language of § 97.75. Rather, the legislative silence in this regard was conscious, and the Court of Appeal did not err.

V. The County's Arguments Are Better Directed To The Legislature

As noted above, the Legislature plainly knows how to provide financial assistance to counties for property tax administration. Indeed, the County's Petition for Review details several unambiguous examples of the Legislature doing just that. Thus, the Court of Appeal properly held that § 97.75, enacted 10 years after §§ 95.3 and 96.1, was not intended to result in an annual multi-million dollar windfall to Los Angeles County at the expense of the Cities. The County obviously wishes otherwise but, as the Court of Appeal noted in the last sentence of its decision: "In the end, it is up to the Legislature not the courts to rewrite the statute." (Decision, p. 19.)

CONCLUSION

The Opinion issued in the instant case conflicts with no other appellate decision; therefore, review is not warranted. The cities respectfully assert that

review should be denied for all of the foregoing reasons.

DATED: September 1, 2010

Respectfully submitted,

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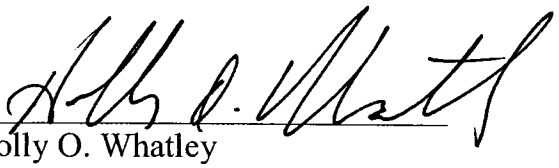
By: 

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies pursuant to Rule 8.500(d)(1) of the California Rules of Court, this Answer contains 3,356 words, fewer than the 4,200 words permitted by the rule. Counsel relies on the word count feature of the Word 2007 computer program used to prepare this brief.

DATED: September 1, 2010

Respectfully submitted,

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PROOF OF SERVICE
City of Alhambra, et al. v. County of Los Angeles, et al.
Case No. S185457

I, Martha C. Rodriguez, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 300 S. Grand Avenue, Suite 2700, Los Angeles, California 90071. On September 1, 2010, I served the document(s) described as **ANSWER TO PETITION FOR REVIEW** on the interested parties in this action as follows:

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Executed on September 1, 2010 at Los Angeles, California.

Martha C. Rodriguez